

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24**

VENTURE STEEL, INC. D/B/A ACESCO CARIBE MFG.  
Employer

and

UNION DE TRABAJADORES INDUSTRIALES DE PUERTO  
RICO, INC.

Petitioner

and

UNITED AUTO WORKERS, LOCAL 2311

Incumbent

Case 24-RC-8587

**REPORT AND RECOMMENDATION ON CHALLENGED BALLOTS**

Pursuant to a Stipulated Election Agreement approved by the undersigned Regional Director on January 17, 2008, an election by secret ballot was conducted on February 13, 2008, among certain employees of the Employer<sup>1</sup>, to determine whether or not said employees desired to be represented for the purpose of collective bargaining by Union de Trabajadores Industriales de P.R., Inc., herein called Petitioner, or by United Auto Workers, Local 2311, herein called Incumbent.

The Corrected Tally of Ballots, copies of which were duly made available to each of the parties, issued on February 14, 2008. The Corrected Tally of Ballots reflected the following:

Approximate number of eligible voters	51
Void ballots	1
Votes cast for Incumbent	11
Votes cast for Petitioner	25
Votes cast against participating labor organizations	10
Valid votes counted	46
Challenged ballots	4
Valid votes counted plus challenged ballots	50

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<sup>1</sup>The bargaining unit included all production, drivers, and maintenance employees employed by the Employer at its place of business located in Bayamón, Puerto Rico; but excluding all other employees, guards and supervisors as defined by the Act.

Challenges are sufficient in number to affect the results of the election.

Pursuant to the Stipulated Election Agreement, and in conformity with Section 102.69 of the Board's Rules and Regulations, the undersigned Regional Director caused an investigation to be made of the challenged ballots and sets forth her findings and conclusions and recommendations with respect thereto.

By letter dated February 14, 2008, the undersigned requested the parties to submit a written statement regarding the challenges together with any evidence in support thereof by no later than February 21, 2008. The Employer and the Petitioner timely complied with the Region's request by letters dated February 19 and 21, 2008, respectively. No objections were timely filed by the parties.

### **THE CHALLENGED BALLOTS**

#### **I. The Ballots of Jonathan Albaladejo-Beltran, Carlos Franco, and Ariel Berrios**

On the date of the election, the Petitioner challenged the votes of Jonathan Albaladejo-Beltran, Carlos Franco, and Ariel Berrios on the basis that they are probationary employees. The Petitioner contends that Albaladejo-Beltran, Franco, and Berrios are probationary employees who do not have an expectation of employment and are therefore not eligible to vote. Specifically, the Petitioner contends that Albaladejo-Beltran and Franco were hired to paint the Employer's facility, a project of short duration. The Petitioner also contends that the work Albaladejo-Beltran and Franco are currently performing is not bargaining unit work. The Employer claims that Albaladejo-Beltran and Franco were hired on December 10, 2007 to perform maintenance work and signed 90-day probationary contracts in effect until March 10, 2008. The Employer also claims that upon completion of their respective probationary periods, they will likely remain in the Employer's employ to finalize the painting project involving the physical facility and then will most likely be assigned to work in the production area. In Regency Services Carts, Inc., 325 NLRB 617 (1998), the Board held that the "party seeking to exclude an individual from voting has the burden of establishing that the individual is, in fact, ineligible to vote."

The investigation revealed that Albaladejo-Beltran and Franco were placed on the Employer's payroll and earned wages beginning on December 10, 2007, and worked under the supervision of the Employer performing bargaining unit work as maintenance employees prior to the payroll eligibility date of January 9, 2008. The work performed by Albaladejo-Beltran and Franco includes painting of the physical facility and equipment, trimming trees and bushes, and cleaning. They both signed 90-day probationary contracts and according to the Employer, there is an expectation of continued employment since it is likely that upon their passing the probationary period, Albaladejo-Beltran and Franco will become permanent employees and assigned to work in the production area. The investigation also disclosed that the duties currently performed by Albaladejo-Beltran and Franco, such as trimming trees and cleaning, have been traditionally performed by the maintenance employees, a bargaining unit classification. Probationary employees sharing the same duties and basic terms of employment of permanent employees, and who have an expectation of permanent employment upon completion of his or her probationary period, are eligible to vote. Dynacorp/Dynair Services, Inc., 320 NLRB 120 (1995). Accordingly, the challenge to the ballots of Jonathan Albaladejo-Beltran and Carlos Franco are overruled.

With regard to the challenged ballot of Ariel Berrios on the grounds that he is a probationary employee, the Petitioner submits that Berrios has since completed the 90-day probationary period and became a permanent employee of the Employer. In view of the change of circumstances concerning Berrios, the Petitioner requested the withdrawal of its challenge. Accordingly, I recommend that the challenge to Berrios' ballot be overruled.

## II. The Challenged Ballot of Edgard Rivera

On the date of the election, the Board agent challenged the ballot of Edgard Rivera because his name did not appear on the list of eligible voters. In its statement of position, the Employer stated that Rivera was discharged for cause and therefore not eligible to vote. Contrary to the Employer, the Petitioner asserted that Rivera was unjustly discharged and therefore eligible to vote. To be eligible to vote, an individual must be "employed and working" in the bargaining unit on the eligibility date, unless absent for certain specified reasons. Dyncorp/Dynair Services, 320 NLRB 120

(1995), cited in Sweetener Supply Corp., 349 NLRB No. 104 (2007). The Stipulated Election Agreement signed by the parties on January 15, 2008, sets forth January 9, 2008 as the payroll eligibility date. The investigation revealed that Rivera was employed on January 9, 2008 and discharged on January 10, 2008. Thus, Rivera was not an employee of the Employer on the date of the election. It is noted that there is no evidence that Rivera is the subject of an unfair labor practice charge alleging his unlawful termination. Accordingly, since Rivera was not an employee of the Employer on the day of the election, I recommend that the challenge to his ballot be sustained. Stainless Welded Products, Inc., 104 NLRB 204,205 (1953).

### **CONCLUSION AND RECOMMENDATION**

On the basis of the investigation and for the reasons stated above, it is recommended that the challenge to the ballot of Edgar Rivera be sustained, and the ballots of Jonathan Albaladejo, Carlos Franco and Ariel Berrios be opened, commingled and counted on a date, time and place to be scheduled by the undersigned, an appropriate Revised Tally of Ballots be prepared and served upon the parties, and the appropriate certification issue.<sup>2</sup>

At San Juan, Puerto Rico this 14<sup>th</sup> day of March, 2008.

Marta M. Figueroa  
Regional Director  
National Labor Relations Board  
Region 24

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<sup>2</sup>Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. 20570. Exceptions must be received by the Board in Washington by March 28, 2008.

Under the provisions of Section 102.69(g) of the Board's rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov)